

105TH CONGRESS
1ST SESSION

S. 1513

To amend the Internal Revenue Code of 1986 to provide for the treatment of tax-exempt bond financing of certain electrical output facilities.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10, 1997

Mr. MURKOWSKI introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for the treatment of tax-exempt bond financing of certain electrical output facilities.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. TREATMENT OF TAX-EXEMPT BOND FINANCING**
4 **OF CERTAIN ELECTRICAL OUTPUT FACILI-**
5 **TIES.**

6 (a) CERTAIN TRANSACTIONS TREATED AS SALES TO
7 GENERAL PUBLIC FOR PURPOSES OF PRIVATE BUSINESS
8 TESTS.—Paragraph (8) of section 141(b) of the Internal
9 Revenue Code of 1986 (defining nonqualified amount) is
10 amended to read as follows:

1 “(8) NONQUALIFIED AMOUNT.—For purposes
2 of this subsection—

3 “(A) IN GENERAL.—The term ‘non-
4 qualified amount’ means, with respect to an
5 issue, the lesser of—

6 “(i) the proceeds of such issue which
7 are to be used for any private business use,
8 or

9 “(ii) the proceeds of such issue with
10 respect to which there are payments (or
11 property or borrowed money) described in
12 paragraph (2).

13 “(B) USE PURSUANT TO CERTAIN TRANS-
14 ACTIONS NOT TAKEN INTO ACCOUNT.—There
15 shall not be taken into account in determining
16 a nonqualified amount with respect to an issue
17 5 percent or more of the proceeds of which are
18 to be used with respect to any output facility
19 furnishing electric energy any of the following
20 transactions:

21 “(i) The sale of output by such facil-
22 ity to another State or local government
23 output facility for resale by such other fa-
24 cility if such other facility is not participat-
25 ing in an open access plan (as defined in

subsection (f)(3)) and the output is to be used for government use.

“(ii) Participation by such facility in an output exchange agreement with other output facilities if—

“(I) such facility is not a net seller of output under such agreement determined on not more than an annual basis,

“(II) such agreement does not involve output-type contracts, and

“(III) the purpose of the agreement is to enable the facilities to satisfy differing peak load demands or to accommodate temporary outages.

“(iii) The sale of excess output by such facility pursuant to a single agreement of not more than 30 days duration, other than through an output contract with specific purchasers.

“(iv) The sale of excess output by such facility not to exceed \$1,000,000.”.

(b) ELECTION TO TERMINATE TAX-EXEMPT BOND FINANCING BY CERTAIN ELECTRICAL OUTPUT FACILITIES.—Section 141 of the Internal Revenue Code of 1986

1 (relating to private activity bond; qualified bond) is
 2 amended by adding at the end the following:

3 “(f) ELECTION TO TERMINATE TAX-EXEMPT BOND
 4 FINANCING BY CERTAIN ELECTRICAL OUTPUT FACILI-
 5 TIES.—

6 “(1) IN GENERAL.—In the case of an output
 7 facility for the furnishing of electric energy financed
 8 with bonds which would cease to be tax-exempt as
 9 the result of the participation by such facility in an
 10 open access plan, such bonds shall not cease to be
 11 tax-exempt bonds if the person engaged in such fur-
 12 nishing by such facility makes an election described
 13 in paragraph (2). Such election shall be irrevocable
 14 and binding on any successor in interest to such per-
 15 son.

16 “(2) ELECTION.—An election is described in
 17 this paragraph if it is an election made in such man-
 18 ner as the Secretary prescribes, and such person
 19 agrees that—

20 “(A) such election is made with respect to
 21 all output facilities for the furnishing of electric
 22 energy by such person,

23 “(B) no bond exempt from tax under sec-
 24 tion 103 may be issued on or after the date of
 25 the participation by such facilities in an open

1 access plan with respect to all such facilities of
 2 such person, and

3 “(C) such outstanding bonds used to fi-
 4 nance such facilities for such person are re-
 5 deemed not later than 6 months after—

6 “(i) in the case of bonds issued before
 7 December 1, 1997, the later of—

8 “(I) the earliest date on which
 9 such bonds may be redeemed, or

10 “(II) the date of the election, and

11 “(ii) in the case of bonds issued after
 12 November 30, 1997, and before the date of
 13 the participation by such facility in an
 14 open access plan, the earlier of—

15 “(I) the earliest date on which
 16 such bonds may be redeemed, or

17 “(II) the date which is 10 years
 18 after the date of the enactment of this
 19 subsection.

20 “(3) OPEN ACCESS PLAN.—For purposes of this
 21 subsection, the term ‘open access plan’ means—

22 “(A) a plan by a State to allow more than
 23 1 electric energy provider to offer such energy
 24 in a State authorized competitive market, or

1 “(B) a plan established or approved by an
2 order issued by the Federal Energy Regulatory
3 Commission which requires or allows trans-
4 mission of electric energy on behalf of another
5 person.

6 “(4) RELATED PERSONS.—For purposes of this
7 subsection, the term ‘person’ includes a group of re-
8 lated persons (within the meaning of section
9 144(a)(3)) which includes such person.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to sales of output after November
12 8, 1997.

○